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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GINGER KATHRENS, et al.,

Case No. 3:18-cv-1691-MO

Plaintiffs,

DEFENDANTS' MOTION TO DEFER
BRIEFING ON PLAINTIFFS'
APPLICATION FOR FEES

v.

DAVID BERNHARDT, Secretary of the
United States Department of the Interior, et al.,

Defendants.

MOTION

Defendants respectfully request that the Court defer briefing on Plaintiffs' Application for Fees (ECF 65) until Plaintiffs' Motion for Reconsideration (ECF 64) is resolved. Pursuant to Local Rule 7-1(a), the parties made a good faith effort to resolve their dispute regarding

deferring briefing on the Application for Fees. Plaintiffs have provided the following position on this motion: Plaintiffs oppose this motion because Plaintiffs believe that Plaintiffs' Motion for Reconsideration is inextricably intertwined with Plaintiffs' application for fees under the Equal Access to Justice Act.

MEMORANDUM IN SUPPORT OF MOTION

Defendants' Motion to Defer Briefing is supported by the following:

1. On March 19, 2020, the Court held a telephonic hearing on Defendants' Motion to Lift the Stay (ECF 55) and Motion to Dismiss for Lack of Jurisdiction (ECF 36). The Court granted both of Defendants' motions from the bench. The Court held that Defendants' Motion to Dismiss was granted for the reasons stated in Defendants' briefing and during their oral argument. ECF 62. The next day, the Court issued a Judgment ordering that the case is dismissed with prejudice and "with no award of attorney fees, costs, or prevailing party fees to any party." ECF 63.

2. On April 17, 2020, Plaintiffs filed a Motion for Reconsideration of the Judgment. ECF 64. Rather than identifying any particular factual or legal error committed by the Court, Plaintiffs instead argue that reconsideration is justified "because at the time the Court entered Judgment denying Plaintiffs fees and costs, Plaintiffs had not yet had any opportunity to file any Application explaining their eligibility for, and entitlement to, recovery of attorneys' fees and costs under [the Equal Access to Justice Act]." *Id.* at 1.

3. That very same day, Plaintiffs filed an Application for Fees, seeking \$200,972.57 plus additional amounts for time spent preparing a future reply brief in support of that motion. ECF 65 at 10. Plaintiffs filed timesheets and declarations in support of their Application. *See* ECF 65-1 to ECF 65-11.

4. Defendants oppose Plaintiffs' Motion for Reconsideration as well as their Application for Fees. Pursuant to Civil Local Rule 7-1(e) and 54-3(b), Defendants' oppositions to both motions are presently due on May 1, 2020. However, Defendants have filed a consent motion to extend the deadline to May 15, 2020. ECF 66.

5. It is premature for the parties to continue briefing Plaintiffs' Application for Fees.¹ As Plaintiffs recognize, the current law of the case is that no party is entitled to fees or costs. *See* ECF 64 at 1. Therefore, Plaintiffs must first succeed on their Motion for Reconsideration before their Application for Fees could even be litigated.

6. It is also a tremendous waste of the government's resources to spend hours analyzing the anticipatory Application for Fees (including the timesheets and declarations) and drafting and filing an opposition to that Application, given the Court's Judgment that no party will be awarded fees or costs and that Plaintiffs' Motion for Reconsideration has not been fully briefed by the parties, never mind decided by the Court.

7. Plaintiffs will not be harmed by the Court deferring briefing on their Application for Fees, as the Court's Judgment does not entitle them to attorneys' fees or costs. ECF 63. Deferring briefing would conserve all of the parties' resources, including Plaintiffs' own, because if the Court denies the Motion for Reconsideration, there will be no need for the parties to submit further briefs regarding the Application for Fees.

For these reasons, Defendants respectfully request that the Court defer briefing on Plaintiffs' Application for Fees until the Motion for Reconsideration is decided. Should the Court

¹ Defendants recognize that the Equal Access to Justice Act requires Plaintiffs to file an application for attorneys' fees and costs within 30 days of the Court entering final judgment. 28 U.S.C. § 2412(d)(1)(B). But the Act does not require the government to respond to Plaintiffs' Application, or for Plaintiffs to file a reply in support of their Application, by a certain time.

grant Plaintiffs' Motion for Reconsideration, Defendants would submit an opposition to the Application for Fees within 30 days of the Court's Order.

Dated: April 27, 2020

Respectfully submitted,

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SETH M. BARSKY, Chief
S. JAY GOVINDAN, Assistant Chief

/s/ Kaitlyn Poirier

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2020, a true and correct copy of the above document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Kaitlyn Poirier

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